80-1206

No._____

Supreme Court, U.S.
FILED
JAN 19 1981
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

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_____ Term, 1980

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In Re: VILMA GRCICH.

In Re: ESTATE OF VILMA GRCICH, Deceased,

STEPHEN J. GRCICH, Administrator,

Petitioner,

vs.

PITTSBURGH NATIONAL BANK,

Respondent.

_____

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

_____

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Statement of Questions Involved

The following questions are presented by this appeal:

a. Were the constitutional rights of Vilma Grcich violated when she was prematurely declared incompetent by a Court Order signed "By the Court" before the hearing on the Petition to Declare Incompetent and to Appoint a Guardian was held?

b. Was Pittsburgh National Bank a duly appointed guardian or was it acting as a guardian "de son tort" at the insistence of the Veterans Administration?

c. As the Veterans Administration loses control of funds when the funds are paid to one that the Veterans Administration believes is a guardian, how does the Veterans Administration direct that the funds be used to pay past debts contrary to 38 U.S.C. §3101(a)?

d. Were the constitutional rights of the decedent, Vilma Grcich, violated when the guardian "de son tort" petitioned and was granted six (6) *ex parte* Orders?

e. Is it proper to make Court Orders affecting the funds of one who has been institutionalized from April 12, 1935 until October 23, 1973, the date of her death, without appointing an Attorney or a guardian *ad litem* for her?

f. Does a guardian or a guardian "de son tort" have the right to refuse to use valid defenses, *viz.* (1) Alleged incompetent was never compensated for her work; (2) Alleged incompetent was not legally institutionalized at the time payment was requested and made, (3) the protection of 38 U.S.C. §3101 (a) barring payment of past debts, and is the refusal to use these defenses grounds for surcharge?

II.

g. Did the Supreme Court of Pennsylvania err in classifying compensation for a battlefield death as a gratuity when in fact it is an earned benefit?

h. Did the Supreme Court of Pennsylvania misapply the law on the facts in evidence because of a "conflict of Interest" due to the employment and the appointments on committees of the Judges who signed the very *Ex Parte* Orders upon which this case is based?

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STEPHEN J. GRCICH, Administrator,

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vs.

PITTSBURGH NATIONAL BANK,

Respondent.

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PETITION FOR A WRIT OF CERTIORARI

To the Honorable, Chief Justice and Associate Justices of the Supreme Court of the United States.

Stephen J. Grcich, the administrator of the Estate of Vilma Grcich, deceased, on the behalf of Vilma Grcich and for the estate, petitioner herein prays that a writ of certiorari issue to review the judgment of the Supreme Court of Pennsylvania entered in the above entitled case.

Reference to Opinions Delivered by Courts Below

The official reports of the Opinions in this case are as follows:

The Opinion and Order of Paul A. Simmons, J. dated May 1, 1978.

In the Court of Common Pleas of Washington County, Pennsylvania:

In Re: Vilma Grcich, Civil Division, No. 5281 In Equity.

In Re: Estate of Vilma Grcich, Deceased, Orphans' Court Division, No. 63-78-146.

The various Opinions of the Supreme Court of Pennsylvania:

In Re: Vilma Grcich, Appeal of Pittsburgh National Bank, No. 77 March Term, 1978.

In Re: Estate of Vilma Grcich, Appeal of Pittsburgh National Bank, No. 78 March Term, 1978.

Mr. Justice Manderino filed an Opinion in Support of Affirmance.

Mr. Justice Larsen filed an Opinion in Support of Affirmance in which Mr. Justice Nix and Mr. Justice Manderino join.

Mr. Justice Roberts filed an Opinion in Support of Reversal in which Mr. Justice Eagen and Mr. Justice O'Brien join.

The above opinions were filed June 29, 1979 and as the Court was equally divided the Order of Judge Simmons was affirmed.

A Rehearing was had on this issue and then the order was reversed.

Mr. Justice Roberts filed the Opinion of the Court on October 31, 1980 and it is from this Opinion that this appeal is taken.

Statement of Grounds Jurisdiction is Invoked

The grounds on which the jurisdiction of The Supreme Court of the United States is invoked is under the authority of 28 U.S.C. §1257 which authorizes an appeal from the Highest Court of a State or Commonwealth and further because the federal questions of due process and equal protection of the law is in issue and also for the reason that a Federal Statute 38 U.S.C. §3101(a) was misapplied. The appeal is from the decision of the Supreme Court of Pennsylvania filed October 31, 1980.

Constitutional Provision and Statutes Involved

United States Constitution, 14th Amendment

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State where they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

38 U.S.C. §3101(a)

Nonassignability and exemption status of benefits

(a) Payments of benefits due or to become due under any law administered by the Veterans Administration shall not be assignable except to the extent specifically authorized by law, and such payments made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. The preceding sentence shall not apply to claims of the United States arising under such laws nor shall the exemption therein contained as to taxation extend to any property purchased in part or wholly out of such payments. The provision of this section shall not be construed to prohibit the assignment of insurance otherwise authorized under Chapter 19 of this title (§§701-788 of this title), or of servicemen's indemnity.

PENNSYLVANIA Incompetents' Estates Act of 1951

50 P.S. §3401. Possession of real and personal property

The guardian of the estate of an incompetent, until it is distributed or sold shall have the right to, and shall take possession of, maintain and administer each real and personal asset of the incompetent, collect the rents and income from it, and make all reasonable expenditures necessary to preserve it. He shall also have the right to maintain or defend any action with respect to such real or personal property.

E. RIGHTS OF INCOMPETENT AND DISTRIBUTEES

50 P.S. §3641. Liability of guardian for interest

A guardian who has committed a breach of duty with respect to estate assets shall, in the discretion of the court, be liable for interest, not exceeding the legal rate thereon.

50 P.S. §3644. Distributions of income and principal during incompetency

All income received by a guardian of the estate of an incompetent, in the exercise of a reasonable discretion, may be expended in the care and maintenance of the incompetent without necessity of court approval. The Court, for cause shown, may authorize or direct the payment or application of any or all of the income or principal of the estate of an incompetent, his spouse, children or those for whom he was making such provision before his incompetency, or for reasonable funeral expenses of the incompetent's spouse, child or indigent parent. In proper cases the court may order payment of amounts directly to the incompetent for his maintenance or for incidental expenses and may ratify payments made for these purposes.

Statement of the Case

Vilma Grcich was committed to Torrence State Hospital on April 14, 1935. Due to her anticipated receipt of compensation from the Veterans Administration due to the battlefield death of her son, Joseph W. Grcich, upon whom she was dependent, on August 1, 1955 a petition to declare the said Vilma Grcich an incompetent and to appoint a guardian for her estate was filed at No. 5281, in the Court of Common Pleas of Washington County, Pennsylvania. On that day an order was signed by Carson, P.J. fixing the date for hearing on the petition, requiring 10 days notice to the said Vilma Grcich, notice to her immediate family and further ordered and directed that an affidavit be submitted by a physician on the staff of the Torrence State Hospital, as to the mental condition of the said Vilma Grcich. The order stated that Arthur E. Ashton, Esq. Chief Counsel for the Veterans Administration in Pittsburgh, Pennsylvania, appeared for the petition and moved the Court for the Order. On August 22, 1955 an order declaring Vilma Grcich an incompetent and designating Peoples First National Bank and Trust Company as guardian of her estate was signed "By the Court". This order was stamped by the Prothonotory at 10:18 A.M. even though the hearing on the Petition which was held before Weiner, J. did not commence until 10:30 A.M. The order was not signed by the Hearing Judge but was signed by Judge Carson. This order was never docketed until some time between April 16, 1973 and January 4, 1974. Copies of the Order of August 22, 1955 were in the hands of the Veterans Administration, the guardian Bank and Torrence State Hospital. This order did not provide for anyone to pay for the incompetent's care and

maintenance and all parties, the guardian Bank, the Veterans Administration and the Commonwealth, had notice of this fact.

Subsequently, an *ex parte* order without a hearing and without notice to any interested party was entered of record on November 1, 1955. On July 6, 1960, a second *ex parte* order without a hearing and without notice to any interested parties (including the incompetent) was entered of record. Again on May 1, 1969 a third *ex parte* order without a hearing or notice to interested parties (including the incompetent) was entered of record. None of the previous orders including the original order required the original guardian, Peoples First National Bank & Trust Co. or the successor guardian, Pittsburgh National Bank (the guardian was changed due to several Bank mergers) to pay any money whatsoever to Torrence State Hospital for the maintenance of Vilma Grcich for a period of 16 years when the Court on April 14, 1971, again entered a fourth *ex parte* order [without a hearing or notice to interested parties (including the incompetent) and without the appointment of a guardian *ad litem* to protect the interests of the incompetent], awarding the sum of $7,600.00 to the Commonwealth of Pennsylvania, Torrence State Hospital for a claim for past maintenance and care of the said Vilma Grcich from December 29, 1936 up to November 30, 1970. The order of April 14, 1971 was signed by Judge Richard DiSalle, who on October 31, 1980 had been and was a clerk for a Justice of the Supreme Court of Pennsylvania, which issued the decision here appealed from, and shortly thereafter was appointed to the expanded Superior Court of Pennsylvania. Again on December 12, 1972, the Court entered a fifth *ex parte* order (without a hearing or notice to interested parties or the appointment of a guardian *ad litem* for the alleged incompetent) and awarded the Commonwealth of Pennsylvania, Torrence State Hospital, the sum of $2,883.00 for a claim for

the past maintenance of the alleged incompetent. Finally, on April 13, 1973, the Court entered a sixth *ex parte* order (also without a hearing, notice, or the appointment of a guardian *ad litem* for the alleged incompetent) wherein the guardian of the estate was authorized to pay Torrence State Hospital the sum of $165.00 per month for the maintenance of the said Vilma Grcich.

On January 1, 1973, the Veterans Administration ceased paying the alleged guardian of the estate of Vilma Grcich the compensation due Vilma Grcich, nor did they pay it directly to the said Vilma Grcich and an underpayment existed at the time of her death.

On October 23, 1973, the said Vilma Grcich died, and on January 4, 1974, the Guardian Bank filed its first and final account setting forth that it had received $17,015.90 in Principal, and income in the amount of $2,685.32. Of the principal, $236.00 was held by the alleged incompetent at the inception of the guardianship, $10,035.00, was received from the United States of America as Veterans Administration compensation and $6,744.90 was received from the United States of America as Social Security benefits. On October 28, 1974, the Guardian Bank filed a petition requesting the Court to confirm the accounting and to order distribution of the balance in the guardianship account of the sum of $846.87.

Formal objections were filed to the accounting by the Administrator of the Estate of Vilma Grcich, Deceased, contending among other matters that the guardian had improperly paid $10,035.00 of Veterans Administration compensation to the Commonwealth of Pennsylvania, Torrence State Hospital, because appropriate Federal Statutes (38 U.S.C. §3101(a)) exempted said money from

being used to pay past debts. The guardian filed a formal answer to these objections. At the hearing of this matter on May 13, 1976, the administrator filed additional objections to the guardian's accounting. A formal answer was filed by the Guardian Bank. In count No. 8 of the supplemental objections, the administrator alleged that all the said sums expended by the guardian were illegal and a nullity because the alleged incompetent was denied due process of law.

The Court on March 3, 1978 entered an order surcharging the guardian, exceptions were filed that day and March 17, 1978 at 10:00 A.M. was set for argument on the exceptions. An Opinion and Order of the Court of Common Pleas of Washington County, Pennsylvania, Civil Division, No. 5281 In Equity and Orphans' Court Division No. 63-78-146 was entered on May 1, 1978, said order surcharged the Pittsburgh National Bank, the guardian, the sum of $10,035.00 with interest for funds received from the Veterans Administration which were improperly used to discharge the past debt allegedly due from said decedent, Vilma Grcich, to the Commonwealth of Pennsylvania, Torrence State Hospital. This matter was appealed by Pittsburgh National Bank to the Supreme Court of Pennsylvania and on July 9, 1979 that Court being equally divided, the order was affirmed. Reargument was requested and allowed and on October 31, 1980 the Supreme Court of Pennsylvania reversed the Order of the Court of Common Pleas of Washington County, Pennsylvania. The reargument resulted in a total misapplication of the law on the facts set forth in the transcript.

Federal Questions Raised

The Federal questions involving the proper application of 38 U.S.C. §3101(a) and the denial of due process in the incompetency proceedings and in the six (6) *ex parte* orders were properly raised by exceptions and supplemental exceptions to the Account of the Guardian Bank at the inception of this case and have been part of this case all through its various appeals and reargruments and is now part of this case.

Argument

All of the payments of principal from the guardianship account to the Commonwealth of Pennsylvania were improper, since the Incompetents' Estates Act of 1955 §644 (50 P.S. §3644) required a Court hearing before any principal of a guardianship estate could properly be paid. This Act was repealed effective December 10, 1974, but was reenacted in identical language in the Probate, Estate and Fiduciary Code (20 P.S. §5536). In this case there were no evidentiary hearings or notice to interested parties prior to the death of the decedent, to support the six *ex parte* Court Orders.

Even if §644 of the Incompetents Estates Act did not require Court Hearings in these matters, hearings would still be required by virtue of the due process guarantees of the 14th Amendment of the United States Constitution. To pay out the alleged incompetent's money without prior or subsequent notice to all interested parties, without a guardian *ad litem* for the alleged incompetent and without an evidentiary hearing certainly fails to meet the minimum rationality standard of due process

and equal protection of the law. See Vecchione v. Wohlgemuth, 377 F. Supp. 1361 (E.D. Pa. 1974); 426 F. Supp. 1297 (1977); 558 F. 2d 150; cert. den. by Supreme Court of United States (citation unavailable).

Further there is no transcript in the record that indicates that the alleged incompetent was found to be incompetent after a full hearing. In addition, there is absolutely no evidence at all in the record that indicates that the said Vilma Grcich was still incompetent as a matter of fact when the Commonwealth of Pennsylvania received the first payment for her maintenance on April 14, 1971, some 35 years after she was first institutionalized and some 16 years after she was last found to be incompetent.

However, the Court held an extensive evidentiary hearing on the entire matter beginning January 13, 1976, which lasted several days and the Court though convinced that the payments were legally improper, concluded that these legally improper payments to the Commonwealth of Pennsylvania for the maintenance of the said Vilma Grcich out of guardianship income and out of principal received from Social Security Income, was justly due and owing to the Commonwealth and should be paid, and that Court saw fit to ratify the payments for that purpose made from the guardianship income and Social Security principal in accordance with equitable principles and in accordance with the intent of §644 of the Incompetents' Estates Act which was applicable at the time of these unlawful payments. (See 50 P.S. §3644 and P.E.F. Code 20 P.S. §5536)

The Court's opinion that the United States Social Security moneys and the income derived from the guardian estate, (unlike the Veterans Administration money)

are not immune from the claims of the Commonwealth for past support and maintenance were accepted by the Administrator as there were no exception filed on this point to the order of March 3, 1978 wherein the Court surcharged the Guardian only for using the alleged incompetent's Veterans Administration funds.

The Court properly refused to ratify the improper principal payments from the Incompetent's estate which were received from the Veterans Administration for arrearages due the Commonwealth for Vilma Grcich's maintenance and care. The sum of money received from the Veterans Administration amounted to $10,035.00. The guardian paid arrearages due the Commonwealth in the amount of $7,600.00 plus $2,883.00 or a total of $10,483.00 for maintenance bills of the alleged incompetent which were past due at the time of payment.

There is no doubt that the guardian received $10,035.000 of the Veterans Administration money and that said money as principal was illegally paid to the Commonwealth since there were no evidentiary hearings as require by law. See Vecchione v. Wohlgemuth, cited *supra.*

The policy of the Federal law which requires the protection of Veterans Administration pension money from the claims of creditors, including the claims of the Commonwealth, precluded the Court from ratifying the payments to the Commonwealth of principal from Veterans Administration funds.

While the Veterans Administration has the right, in the exercise of its discretion, to determine the amount to be used or paid on account of the pensioner's maintenance, in the case at bar, the Veterans Ad-

ministration has never properly and affirmatively exercised its discretion. Letters of acquiescence only from the Veterans Administration were attached to the various petitions for the *ex parte* orders but there were no evidentiary hearings held at any time to support the payments and these copies of the letters were never properly authenticated and presented in evidence in a formal hearing.

Another point to be considered is that the two large payments of $7,600.00 (by order dated April 14, 1971) and $2,883.00 (by order dated December 12, 1972) were made from money that had been given to the guardian by the Veterans Administration without any prior direction as to its use. In this case the funds were in the hands of the guardian before the Veterans Administration purported to give its approval. The funds were therefore, outside the sphere of Veterans Administration control, and any approval or disapproval was at that point irrelevant. See Hines v. Stein, 298 U.S. 94 (1936). The United States Supreme Court has established that even though the funds pass from the control of the Veterans Administration the exemption under 38 U.S.C. §3101(a) remains. See Porter v. Aetna Casualty and Surety Co., 370 U.S. 159 (1962). Chojnacki Estate, 397 Pa. 596, 156 A2d 812 (1959) cert. denied, 363 U.S. 826, 80 S. Ct. 1595, 4 L. Ed. 2d 1522 (1960); and Watkin's Estate, 458 Pa. 662, 330 A2d 534 (1974).

It is clear that if the Commonwealth of Pennsylvania had sued the Guardian Bank for past due maintenance of the alleged incompetent in this case, said Bank could have successfully prevented the Commonwealth from obtaining a judgment against its ward's estate by pleading 38 U.S.C. §3101(a) as was done by the Bank in Watkin's Estate, cited *supra.*

Further, the Guardian Bank had an absolute duty to see to the proper care and management of the ward's estate and to defend against improper claims against the ward's estate. See Calautzis v. Collins, 440 Pa. 354 (1970). See §401 of the Incompetents' Estates Act which was in effect at all relevant times, 50 P.S. §3401. Upon its breach of duty to protect the $10,035.00 of Veterans Administration money from claims of the Commonwealth said guardian Bank is subject to surcharge for that amount plus interest at the legal rate. See §641 of the Incompetents' Estates Act 50 P.S. §3641.

In addition to using the Federal Statute which exempted Veterans Administration funds from the claims of creditors, the guardian Bank had other defenses to the two payments of arrearages for a total of $10,483.00 on the claim of the Commonwealth.

Under the Mental Health Act of 1951 (Act of June 12, 1951, P.L. 533, §101 *et seq.* See 50 P.S. §4101 *et seq.),* the act which was in effect when Vilma Grcich was allegedly declared an incompetent, it was mandatory that the committing Court determine who was to bear the costs of the incompetent's care. (see Estate of Downing, 459 Pa. 537, 330 A2d 530, 531, 532.)

The Commonwealth had notice of the pendency of the action to have Vilma Grcich declared incompetent because the record discloses that William J. Schilling, Superintendent of Torrence State Hospital submitted an affidavit, dated August 11, 1955, setting forth the mental condition of Vilma Grcich, which affidavit was ordered made in accordance with the Order by Judge Carson which set the time and place of the Hearing on the Petition and was dated August 1, 1955.

The Veterans Administration had notice of the matter on hearing to have Vilma Grcich declared incompetent, as Arthur Ashton, the Chief Attorney for the Regional

Office of the Veterans Administration was on record as one of the Attorneys for the Petitioner.

Judge Carson, contrary to Section 701 *et seq.* of the Mental Health Act of 1951 failed to take evidence on the question of maintenance and care of the said Vilma Grcich and did not consider the matter. Even though the Commonwealth's officials are presumed to know the law, and although the Commonwealth had actual knowledge of the proceeding to declare Vilma Grcich incompetent, the Commonwealth did not in any way object to Judge Carson's order and did not at any time claim a right to arrearages for the care and maintenance of Vilma Grcich dating back to December 29, 1936, until December 7, 1970, some fifteen years after the order setting the date for Vilma Grcich's incompetency hearing.

Since the Commonwealth knew or should have known that Judge Carson's Order, signed "by the Court" on August 22, 1955, purporting to adjudicate Vilma Grcich incompetent did not contain any provision for having her estate pay the Commonwealth for her care and maintenance, it was incumbent on the Commonwealth to follow the proper statutory procedure for modifying the Order of August 22, 1955. Because a modification of said order requiring monthly payments for care and maintenance of Vilma Grcich until April 13, 1973 (even though there was no evidentiary hearing to support the Court's Order of April 13, 1973), the Guardian Bank could have successfully defended all claims for arrearages made by the Commonwealth up to and including the date of April 13, 1973, and hence the Guardian Bank's payments to the Commonwealth of $7,600.00 on April 14, 1971 and $2,883.00 on December 12, 1972, were illegal, improper and imprudent and

therefore, for such a violation of its duty as a trustee or even a "trustee de son tort", the guardian Bank should be surcharged.

See Estate of Downing, 459 Pa. 537, 330 A2d 530, 532, where the Court said:

> "The Commonwealth failed to follow statutory procedure for modification of the original order. If the Commonwealth believes that the order improperly disposed of the issue of Downing's maintenance, its remedy is to seek modification of the order. Until it obtains such a modification, the mandate of the court must be obeyed. The Commonwealth is thus precluded from recovering the cost of the incompetent's maintenance incurred in compliance with that order. See Walker v. City of Birmingham, 388 U.S. 307, 87 S. Ct. 1824, 18 L. Ed. 2d 1210 (1967): Philadelphia Marine Trade Association v. International Longshoremen's Association, 453 Pa. 43, 308 A. 2d 98 (1973). Any other result would deny the committing court's order the finality mandated by the Act. Although the Act of 1951 had since been repealed, the validity of orders issued under that Act was in no sense undermined by the repeal."

Another defense which the guardian Bank ignored would be the set-off of payment for the labor done by the alleged incompetent. She worked in the laundry and out in fields and no credit against her care and maintenance, nor any money for incidental expenses was shown on the records of the Commonwealth and the guardian Bank did not request the same. In this action the Guardian Bank was also derelict.

The Supreme Court of Pennsylvania further erred in its decision of October 31, 1980 when it classified the funds being received by Vilma Grcich as a gratuity as these

funds paid by the Veterans Administration were compensation received by a dependent mother as the result of the battlefield death of her son during World War II. This was an earned benefit not a gratuity.

The question of whether the Supreme Court of Pennsylvania misapplied the law on the facts in this case was the result of the effort by that Court to protect the Judges who had issued the *ex parte* orders as one of them was an employee of a Justice of that Court and two others served on committees with the Justices of that Court is left for the Supreme Court of the United States to determine.

Wherefore, your petitioner prays your Honorable Court to reverse the decision of the Supreme Court of Pennsylvania and issue judgment for the Petitioner.

Respectfully submitted,

MORLEY M. AZORSKY
Attorney for Petitioner

APPENDIX

Opinion of the Supreme Court of Pennsylvania at No. 77 March Term, 1978

SUPREME COURT OF PENNSYLVANIA

Western District

IN RE: ESTATE OF VILMA GRCICH, Deceased

Appeal of PITTSBURGH NATIONAL BANK

No. 77 March Term, 1978

JUDGMENT

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the Court of COMMON PLEAS OF WASHINGTON, be, and the same is hereby reversed.

BY THE COURT:

CARL RICE
Carl Rice, Esquire
Prothonotary

Dated: October 31, 1980

Opinion of the Supreme Court of Pennsylvania at No. 78 March Term, 1978

SUPREME COURT OF PENNSYLVANIA

Western District

IN RE: ESTATE OF VILMA GRCICH, Deceased

Appeal of PITTSBURGH NATIONAL BANK

No. 78 March Term, 1978

JUDGMENT

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the Court of COMMON PLEAS OF WASHINGTON County, be, and the same is hereby reversed.

BY THE COURT:

CARL RICE
Carl Rice, Esquire
Prothonotary

Dated: October 31, 1980

[319]

IN THE SUPREME COURT OF PENNSYLVANIA

Western District

IN RE: VILMA GRCICH

Appeal of Pittsburgh National Bank

No. 77 March Term, 1978

IN RE: Estate of VILMA GRCICH

Appeal of Pittsburgh National Bank

No. 78 March Term, 1978

Appeals from the Decree of May 1, 1978, of the Court of Common Pleas of Washington County, Pennsylvania, Civil Division, at No. 5281 In Equity (No. 77) and Orphans' Court Division at No. 63-78-146 (No. 78).

OPINION OF THE COURT

ROBERTS, J. FILED: OCT 31 1980

In *Chojnacki Estate*, 397 Pa. 596, 156 A.2d 812 (1959), cert. denied, 363 U.S. 826, 80 S.Ct. 1595 (1960), this Court unanimously approved the use of veterans' benefits as authorized by the Veterans Administration for the care and maintenance of an incompetent veteran in a Commonwealth institution. In considering " 'the unique nature of the fund and the statutory protections accorded such benefits during the lifetime of the veteran,' " this Court stated:

> " 'It is clear that pension benefits paid by the Veterans administration to a veteran for total non-service-connected disability are a governmental gratuity, and the grant of such allowance to the veteran creates no vested right. The gratuity "... may be redistributed or withdrawn at any time in the discretion of Congress:" Lynch v. U.S., 292 U.S. 571, 577.' "

Id., 397 Pa. at 599, 156 A.2d at 814 (quoting orphans' court). Here the guardian of the estate of Vilma Grcich, with the Veterans Administration's approval and pursuant to court order, reimbursed the Commonwealth from veterans' benefits for institutional care and maintenance. In harmony with *Chojnacki* we conclude that the reimbursement was proper and that the guardian may not be surcharged.

From 1936 until her death in 1973, Vilma Grcich was hospitalized at the Torrence State Hospital, a facility operated by the Commonwealth. In 1955 Mrs. Grcich

was formally adjudicated incompetent, and a corporate fiduciary was appointed as guardian of her estate.[1] Because one of her sons was a deceased veteran, she became the beneficiary of veterans' payments to provide for her care and support. From 1955 to 1970, the guardian did not pay the Commonwealth for Mrs. Grcich's care and support and instead allowed these veterans' funds to accumulate in her account. When in 1970 the Commonwealth requested reimbursement for the care and support of Mrs. Grcich, the guardian consulted the Veterans Administration, which by letter consented to payment from the accumulated funds.[2] The guardian also petitioned the Court of Common Pleas of Washington

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[1] The appointed guardian of the estate was Peoples First National Bank and Trust Co. As a result of bank mergers Pittsburgh National Bank became the successor guardian.

[2] The guardian received a letter of March 10, 1971, from the Veterans Administration approving the expenditure of veterans' funds and advising only that some of Mrs. Grcich's assets be retained in her account. The undisputed testimony of Veterans Administration District Counsel, Daniel J. Parent, confirms beyond question that the Veterans Administration approved and ratified the payment to the Commonwealth from veterans' funds:

> "Q. Now, as authority as Chief Counsel of the Veterans Administration, in your opinion, sir, did Pittsburgh National Bank have authority of the Veterans Administration to make the payment to Torrence State Hospital for Vilma Grcich?
>
> A. Yes, they certainly did.
>
> . . .
>
> Q. Did Pittsburgh National Bank in this case and with this disbursement that we're speaking of act with full acquiescence and permission of the Veterans Administration?
>
> A. Yes."

County on two occasions for approval of payment pursuant to section 644 of the Incompetent's Estate Act.[3] That section provides in part:

> "The court, for cause shown, may authorize or direct the payment or application of any or all of the income or principal of the estate of an incompetent for the care, maintenance or education of the incompetent . . . ."

In 1971 and again in 1972 the court determined that payment of the Commonwealth's claim was proper and accordingly issued two orders which "authorized and directed" the payment of a total of $10,483.00 to the Commonwealth. The guardian paid to the Commonwealth the full amount ordered, $10,035.00 of which was from accumulated veterans' benefits.

Following Mrs. Grcich's death in 1973, the guardian filed a final account in the Orphans' Court Division, Washington County Court of Common Pleas. The administrator of decedent's estate, on behalf of decedent's heirs, filed objections collaterally attacking the 1971 and 1972 court-ordered payments made from the incompetent's estate to the Commonwealth for Mrs. Grcich's support. The administrator argued before Judge Simmons in the decedent's estate proceeding that under 38 U.S.C. §3101(a) veterans' benefits are protected from the

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[3] Section 644 of the Incompetent's Estates Act, Act of February 28, 1956, P.L. (1955) 1154, art. VI, 50 P.S. §3644, was repealed by the Act of December 10, 1974, P.L. 867, §19, and was replaced by identical language in section 5536 of the Probate, Estates and Fiduciaries Code, 20 Pa. C.S.A. §§101 *et seq.*

claims of creditors and that therefore the previously court-ordered payments to the Commonwealth should not have been made and that the funds should instead have been retained for the benefit of the heirs. In 1978, despite the final and unappealed court orders of 1971 and 1972 by judges of competent jurisdiction coequal to Judge Simmons and despite the Veterans Administration's explicit approval of the payments by the guardian, Judge Simmons surcharged the guardian for the payments made pursuant to the previous court orders in the total amount of $10,035 plus interest. This appeal followed. After consideration and decision, this Court granted reargument. We now reverse.

To those receiving veterans' benefits Congress has granted a special protection under 38 U.S.C. §3101(a):

> "(a) Payments of benefits due or to beome due under any law administered by the Veterans' Administration shall not be assignable except to the extent specifically authorized by law, and such payments made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. . . ."

This provision assures that the recipient of veterans' payments is provided for during his or her lifetime and that the support funds are not diverted from their intended use by involuntary seizure or attachment. See *Chojnacki Estate, supra.* Recognizing the protection from

judgment creditors afforded under 38 U.S.C. §3101(a)[4], we nevertheless find nothing which would authorize the surcharge of a guardian who, with the consent of the Veterans Administration and court approval, uses veterans funds to pay the Commonwealth for the ward's care and maintenance. See *Stein's Estate,* 118 Pa. Super. 549, 180 A. 577 (1935), aff'd *sub nom. Hines v. Stein,* 298 U.S. 94 (1936).[5]

If the view of the administrator and the hearing court were to prevail, the result would be that the payments for a beneficiary's support could not be used as Congress intended but would instead become a windfall gain to the heirs of the incompetent beneficiary. Surely the veterans payments gratuitously provided for the support, care and maintenance of the beneficiary may not be withheld from that use merely because the recipient has been declared incompetent.

The record is undisputed that only the Commonwealth provided and paid for the care and support of the incompetent, and therefore only the Commonwealth is en-

[4] See *Watkins Estate,* 458 Pa. 662, 330 A.2d 534 (1974); *Chojnacki Estate, supra.* See also *Porter v. Aetna Casualty and Surety Co.,* 370 U.S. 159, 82 S.Ct. 1231 (1962) (protection from judgment creditors extends to monies received and deposited in federal savings and loan account). But see *State v. Bean,* 159 Me 455, 195 A.2d 68 (1963) (state providing care to imcompetent not a creditor for purposes of section 3101).

[5] Because the Veterans Administration, by its letter of March 10, 1971, and according to the testimony of Veterans Administration counsel, consented to the payment by the guardian of the Commonwealth's claim (see note 2, *supra*), we are not presented with the issue whether the Veterans Administration is entitled to maintain any control over benefits sent to and received by a guardian appointed by a state court. See *Hines v. Stein, supra.*

titled to be reimbursed from the veterans' funds for the incompetent's care. The heirs who contributed nothing to the cost of Mrs. Grcich's care during her many years in a state hospital are by no rule of law or equity entitled to have the Veterans Administration funds diverted from use for her care and instead made the basis of a huge windfall gift of inheritance to the heirs. The veterans' benefits were never intended to provide a gift for heirs and the funds were never granted for that purpose. Moreover, such a result may not be obtained by surcharging the corporate fiduciary as Judge Simmons did. Disallowing payment for the care and maintenance of the incompetent and instead utilizing veterans' benefits to provide testamentary gifts to the incompetent's heirs is unsupported by federal or state law and is offensive to every principle of citizen-government fairness.

The Legislature has carefully established a statutory procedure by which a guardian may obtain judicial review of proposed expenditures. The Commonwealth's statutory scheme placing upon the courts the responsibility for the "administration and distribution of . . . property of the estates of incompetents . . ."[6] leaves no doubt that payments made by a court-appointed guardian pursuant to court order may not, absent fraud, render the guardian individually liable. Although a

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[6] Section 711(10) of the Probate, Estates and Fiduciaries Code, 20 Pa. C.S.A. §§101 *et seq.*

The orders in the present case were issued by the court of common pleas pursuant to the jurisdiction granted in the Act of June 16, 1886, P.L. 734, §13, 17 P.S. §281. Such jurisdiction now lies in the orphans' court pursuant to 20 Pa. C.S.A. §711(10).

fiduciary "must be held responsible for payments made without the approval of the court which turn out to have been improper," *Heaney v. Riddle,* 343 Pa. 453, 457, 23 A.2d 456, 459 (1942), there is no basis for liability where court approval has been obtained. In *Appeal of Halsey,* 120 Pa. 209, 214, 13 A. 934, 936 (1888), this Court held that the guardian of an incompetent's estate

> "was but the officer of the Court of Common Pleas, and all he did was done under the order and sanction of that court; neither can he be punished for its errors, if, indeed, any such there were. . . . His business was to obey the orders of his legal superior, and, having done so, he is entitled to protection."

Accord, *In re Guardianship of Sorrels,* 58 Ariz. 25, ____, 117 P.2d 96, 102 (1941); see *Free's Estate,* 327 Pa. 362, 194 A.2d 492 (1937); *White's Estate,* 322 Pa. 85, 185 A. 589 (1936); *In re Estate of Borntraeger,* 50 P.L.J. 336 (1903). No case in this Court has held a fiduciary individually liable when acting pursuant to a court decree. Our courts have always accorded a fiduciary acting under court decree this absolute and essential protection. Indeed, this principle forms the very foundation of the orderly and fair administration of estates by our courts. Were the law otherwise, petitions for court approval of an expenditure of estate assets or for any other purpose would be a total waste of judicial and professional resources and an exercise in futility.

The protection afforded by the court order flows directly from the well-established and far-reaching authority of state courts over court appointed guardians. See *Hines*

v. Stein, 298 U.S. 94, 98 (1936). To deny this protection here would jeopardize the ability of our courts to satisfy their statutory mandate and would undermine the important Commonwealth interest favoring an orderly and efficient administration of an incompetent's estate.[7]

The decree of the orphans' court surcharging the guardian for judicially approved reimbursement to the Commonwealth for its cost in caring for and maintaining Mrs. Grcich is reversed. Each party to pay own costs.

Mr. Justice Flaherty did not participate in the consideration or decision of this case.

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[7] The claim that the guardian's use of veterans' benefits to pay for the ward's care and maintenance violated federal policy and that the appointment of the guardian and court-ordered payment violated due process and state law does not affect the guardian's protection from liability for acting in compliance with a court order.

Our decision today is in harmony with that of the three-judge district court in *Vecchione v. Wohlgemuth*, 377 F.Supp. 1361 (E.D. Pa. 1974), on motion to vacate, 426 F.Supp. 1297 (1977), aff'd, 558 F.2d 150, cert. denied, 434 U.S. 943, 98 S.Ct. 439 (1978). *Vecchione* held unconstitutional the direct seizure by the Commonwealth of the income of persons confined in state mental facilities. The district court held, *inter alia*, that under the due process clause a beneficiary may not be deprived of control of his or her income without a prior adjudication of incompetency. Here the guardian made payments reimbursing the Commonwealth for the cost of care and maintenance of Mrs. Grcich following an adjudication of incompetency and pursuant to valid final orders of court. The ultimate issue in this case is only the liability of a guardian acting pursuant to court order and a court decree of incompetency, not the liability of the Commonwealth acting without any judicial process.

No. 80-1206

IN THE

Supreme Court of the United States

October Term, 1980

IN RE: VILMA GRCICH.

IN RE: ESTATE OF VILMA GRCICH, Deceased,

STEPHEN J. GRCICH, Administrator,

Petitioner,

vs.

PITTSBURGH NATIONAL BANK,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA.

RESPONDENT'S BRIEF IN OPPOSITION

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Statement of Issues Involved

The following issues are presented by this appeal:

1. The decision of the Pennsylvania Supreme Court, which did not reach the federal questions raised by the Petitioner, rests on independent and adequate state grounds which render unnecessary any determination of those questions by this Court.

2. The federal questions raised by the Petitioner have been previously presented to this Court.

3. The Petitioner raises issues of fact and law not presented to the Supreme Court of Pennsylvania.

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IN THE

Supreme Court of the United States

October Term, 1980

No. 80-1206

IN RE: VILMA GRCICH.

IN RE: ESTATE OF VILMA GRCICH, DECEASED, STEPHEN J. GRCICH, Administrator,

Petitioner,

vs.

PITTSBURGH NATIONAL BANK,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Pennsylvania.

RESPONDENT'S BRIEF IN OPPOSITION

Statement of the Case

Vilma Grcich was a patient at Torrance State Hospital, a facility operated by the Commonwealth of Pennsylvania, from 1936 until her death in 1973. In 1955, the Veterans Administration awarded Vilma Grcich compensation benefits as the dependent parent of a deceased veteran.

In order that these benefits could be made on behalf of Vilma Grcich, on August 1, 1955, a petition for the appointment of a guardian of the estate of Vilma Grcich was filed in the Court of Common Pleas of Washington County, Pennsylvania. The petition for the appointment of a guardian was presented by Stephen J. Grcich, Vilma Grcich's son and the Petitioner in this case. On August 22, 1955, the Orphans' Court Division of the Court of Common Pleas of Washington County entered an order which appointed Peoples First National Bank and Trust Co. as Guardian of the Estate of Vilma Grcich. As a result of bank mergers, Pittsburgh National Bank became the successor guardian.

From 1955 to 1970, the guardian did not pay the Commonwealth of Pennsylvania for Vilma Grcich's care and maintenance and the veterans' funds were allowed to accumulate. On December 7, 1970, the Commonwealth of Pennsylvania sent a statement of claim to the guardian for the care and maintenance of Vilma Grcich in the amount of $36,710.54 for the period December 29, 1936, through November 30, 1970.

After receiving the Commonwealth's claim, the guardian sought the approval of the Veterans Administration to use the veterans' funds in partial payment of the Commonwealth's claim. The guardian received a letter of March 10, 1971, from the Veterans Administration approving the payment of veterans' funds to the Commonwealth. Further, the guardian, in accordance with Pennsylvania statutory requirements and established Orphans' Court procedure, presented a Petition for Allowance to the Washington County Court of Common Pleas. On April 14, 1971, the Court entered an order which "authorized and directed" the guardian to pay to Torrance State Hospital the sum of $7,600.00 on the state-

ment of claim for the maintenance of Vilma Grcich. The guardian made the payment of $7,600.00 as directed by the Court order. This payment was to apply only to charges incurred after the date of the guardian's appointment, in accordance with the directions of the Veterans Administration.

In October 1972, the Commonwealth requested another lump sum payment for Vilma Grcich's maintenance. As with the first Commonwealth request for payment, the Veterans Administration advised the guardian, by letter of November 14, 1972, that further payment to the Commonwealth was permitted as long as the Grcich Estate retained a balance of $1,000.00 for burial or emergency expenses. And, as with the first Commonwealth request for payment, the Washington County Court of Common Pleas entered an order, dated December 12, 1972, which "authorized and directed" the guardian to pay to Torrance State Hospital the sum of $2,883.00 on the claim for maintenance.

Thus, the guardian made total payments to the Commonwealth of $10,483.00; $10,035.00 of that figure represented Veterans Administration funds which were paid with the written approval of the Veterans Administration and as specifically authorized and directed by valid court orders entered by the Washington County Court of Common Pleas.

Following Mrs. Grcich's death in October 1973, the guardian filed its first and final account with the Washington County Court of Common Pleas on January 4, 1974, and on October 28, 1974, petitioned the Court to confirm the accounting and to order distribution. Stephen J. Grcich, Administrator of the Estate of Vilma

Grcich, filed objections to the account and proposed distribution, contending that the Veterans Administration funds were paid improperly to the Commonwealth.

The Court sustained Stephen Grcich's contention that 38 U. S. Sec. 3101(a) protected the veterans' funds from the Commonwealth's claims and on March 3, 1978, entered an order surcharging the guardian $10,035.00, the amount of Veterans Administration funds paid to the Commonwealth. Exceptions were filed to this order by the guardian and after argument was held, a final order dated May 1, 1978, was issued by Judge Simmons surcharging the guardian $10,035.00, plus interest.

The guardian appealed to the Supreme Court, which on June 29, 1979, by an equally divided court, affirmed the order of the Washington County Orphans' Court.

The guardian petitioned for and was granted reargument before the Pennsylvania Supreme Court. After reargument, at which the Veterans Administration, Commonwealth of Pennsylvania, Pennsylvania Bar Association and Pennsylvania Bankers Association each filed an *amicus curiae* brief on behalf of the guardian, the Pennsylvania Supreme Court, with one Justice not participating, unanimously reversed the order of the lower court on October 31, 1980.

Stephen J. Grcich, Administrator of the Estate of Vilma Grcich, then filed a Petition for a Writ of Certiorari to the Supreme Court of Pennsylvania with this Court on January 19, 1981.

ARGUMENT

The decision of the Pennsylvania Supreme Court, which did not reach the federal questions raised by the Petitioner, rests on independent and adequate state grounds which render unnecessary any determination of those questions by this Court.

It has long been the policy of this Court to refuse review of a federal question if that question was not specifically raised and decided in the state courts below and the state court decision rests on independent and adequate state grounds. See *Owings vs. Norwood's Lessee,* 5 Cranch 344 (1809); *Miller vs. Nicholls,* 4 Wheat. 311, 315 (1819); *Crowell vs. Rondell,* 10 Pet. 368 (1836); *Murdock vs. City of Memphis,* 20 Wall. 590 (1875); *Dewey vs. Des Moines,* 173 U.S. 193, 197-201 (1899); *Whitney vs. California,* 274 U.S. 357, 362-363 (1927); *McGoldrick vs. Compagnie Generale Transatlantique,* 309 U.S. 430, 434-435 (1940); *State Farm Mutual Automobile Ins. Co. vs. Duel,* 324 U.S. 154, 160-163 (1945); *Safeway Stores, Inc. vs. Oklahoma Retail Grocers Assn., Inc.,* 360 U.S. 334, 342, n. 7 (1959); and *Cardinale vs. Louisiana,* 394 U.S. 437 (1969).

The present case comes within this policy because the issue before the Supreme Court of Pennsylvania was whether, under Pennsylvania law, a duly appointed guardian of an incompetent's estate could be surcharged for complying with valid court orders authorizing and directing the guardian to use Veterans Administration funds to discharge legitimate costs incurred by the Commonwealth of Pennsylvania for the care and maintenance of the incompetent.

The Petitioner claims that these court orders were procedurally defective within standards of due process as set forth in *Vecchione vs. Wohlgemuth*, 377 F. Suppl. 1361 (E.D.Pa. 1974), on motion to vacate, 426 F. Supp. 1297 (1977), aff'd, 558 F. 2d. 150, cert. denied, 434 U. S. 943, 98 S.Ct. 439 (1978). However, this issue was not reached by the court below in the present case. In footnote 7 to its Opinion (Pet. Appendix, p. 28) the Pennsylvania Supreme Court clearly states that any claims of violated federal policy do not affect the guardian's protection from liability for acting in compliance with a court order.

In addition, the Court further indicates that its decision, rather than violating *Vecchione*, comports with it in that *Vecchione* dealt with the disbursement of funds prior to an adjudication of incompetency and appointment of a guardian and the procedural safeguards necessary to satisfy due process in that situation. The present case is concerned with disbursement by a guardian, after an adjudication of incompetency, pursuant to court order (See *Vecchione*).

For this Court to take up the issue of due process requirements as enumerated in *Vecchione* and apply them in the present case where the issue was not decided by the Court below would violate the policy begun in *Owings vs. Norwood's Lessee.* In addition, the resultant modifications of long-established Pennsylvania procedural law which could result might effectively destroy the protection and management of incompetents' estates.

If the procedural safeguards of *Vecchione*, where no guardian had been appointed to protect the incompetent's interests were to be extended to situations where guardians have been duly appointed by the courts, the resulting delay and expense involved would be op-

pressive. There would be constant hearings with appointed guardians *ad litem* for the incompetent in interest and required notice to undetermined heirs of the incompetent. The status of the guardian would change from an arm of the court representing the incompetent's legal interest to merely one of several opponents in an adversary relationship. This could well result in a complete retreat by the corporate fiduciary from the field of incompetents' estates. The havoc this would raise in the area of fiduciary law, an area properly controlled by the states, should not be fostered by this Court.

The federal questions raised by the Petitioner have been previously presented to this Court.

It also has been the policy of this Court to refrain from reviewing federal questions which have already been presented for review in prior cases on Petition for Certiorari.

Petitioner here claims that the Court below misinterpreted 38 U.S.C. Sect. 3101(a), in that the Court below should have found the statute to be an absolute bar to the payment of debts from Veterans Administration funds and that no discretion as to the use of the funds could be exercised by the Veterans Administration once the funds are in the guardian's hands.

This federal policy was not reached by the Court below in the present case and no decision was made concerning an application of 38 U.S.C. Sect. 3101(a) (Pet. Appendix, p. 25, footnote 5). However, the Court below did find its decision in the present case to be in harmony with its decision in *Chojnacki Estate,* 397 Pa. 596, 156 A. 2d. 812 (1959) cert. denied, 363 U.S. 826, 80 S. Ct. 1595, 4 L. Ed. 2d. 1522 (1960).

In *Chojnacki Estate,* the Supreme Court of Pennsylvania did reach the issue of federal policy concerning Veterans Administration discretionary powers over funds in the hands of an incompetent's guardian pursuant to 38 U.S.C. Sect. 3101(a). The Court held that the discretionary power exists and the Veterans Administration can direct and withhold payment as it sees fit. See *Chojnacki estate,* p. 600.

In *Chojnacki,* the position of the Pennsylvania Supreme Court regarding this issue of federal policy was clearly decided and then presented to this Court on Petition for Certiorari and the Petition was denied, thereby deciding the Federal question raised. In the present case, the Federal issue was not reached and resolved by the lower court. A fortiori, certiorari should not be granted here.

The Petitioner raises issues of fact and law not presented to the Supreme Court of Pennsylvania.

As stated above, issues not raised and resolved by the Court below should not be the subject of review by this Court. Several issues of law and fact are raised by the Petitioner for the first time before this Court.

The issues of premature declaration of incompetency, the status of Pittsburgh National Bank as guardian, other defenses available to the guardian to protect the funds in question from creditors, and the classification of Veterans compensation benefits are issues which were not raised or resolved before the Court below.

Any determination of these issues would involve complex factual investigations of the circumstances surrounding the declaration of incompetency made by the Court

of Common Pleas of Washington County, the method by which Pittsburgh National Bank was appointed guardian, the work history of the incompetent, the records concerning times when the incompetent was institutionalized, and the way in which the incompetent's veteran son met his death.

These areas of factual investigation are outside this Court's scope of review and their presentment before this Court for initial determination is directly opposed to this Court's policies and legal mandate as to its grant of certiorari. In addition, the facts alleged are distorted, misstated, and intended to inflame the Court.

Petitioner has raised one further issue, and in so doing is attempting to use improperly this Court to question the competency and integrity of the Pennsylvania Supreme Court and the Judiciary of the Court of Common Pleas of Washington County, Pennsylvania. Respondent respectfully requests this Court to exclude from its review the impertinent and unfounded claims of collusion, fraternalism and breach of judicial duty improperly raised by the Petitioner.

CONCLUSION

For these reasons, the Petition for a Writ of Certiorari should be denied:

In that the Court below did not reach or decide any question of federal law or policy, and in that all substantial federal questions raised by Petitioner have been previously presented to this Court for review, and in that distorted issues not raised below are presented for review, Respondent respectfully requests this Court to deny the Petition for a Writ of Certiorari.

Respectfully Submitted,

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No. 80-1206

IN THE

Supreme Court of the United States

October Term, 1980

IN RE: VILMA GRCICH.

IN RE: ESTATE OF VILMA GRCICH, Deceased,

STEPHEN J. GRCICH, Administrator,
Petitioner,

vs.

PITTSBURGH NATIONAL BANK,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA.

REPLY BRIEF FOR PETITIONER

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Statement of Issues Involved

The following issues are presented herein.

1. The Supreme Court of Pennsylvania misapplied Federal Law in this case, and actually misstated facts in its Opinion.

2. The Party who applies for and obtains a Court Order cannot use that Court Order to shield responsibility for actions pursuant to that order if said actions are illegal and the Order violates Federal Law and Constitutional rights.

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IN THE

Supreme Court of the United States

October Term, 1980

No. 80-1206

IN RE: VILMA GRCICH.

IN RE: ESTATE OF VILMA GRCICH, Deceased,

STEPHEN J. GRCICH, Administrator,

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vs.

PITTSBURGH NATIONAL BANK,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA.

REPLY BRIEF FOR PETITIONER

Statement of the Case

Statement of the Case is set forth on page 6 of the Petition for Certiorari and is herein incorporated by reference. It is to be noted that the Petition for the appointment of a guardian for the Estate of Vilma Grcich was presented to the Court of Common Pleas of Washington County, Pennsylvania, In Equity, and the hearing on the Petition was before Weiner, J., however before the hearing on the Petition commenced, Carson, J. signed the Order appointing

Pittsburgh First National Bank & Trust Company as guardian. This occurred on August 22, 1955 and the Order was at NO. 5281 IN EQUITY and the order was not an Order of the Orphans' Court Division as stated in Respondent's Statement of the case.

ARGUMENT

The Supreme Court of Pennsylvania misapplied Federal Law in this case, and actually misstated facts in its Opinion.

The Federal questions were raised in the Supreme Court of Pennsylvania and the Opinion of Simmons, J. which was adopted when that Court divided on June 29, 1979 clearly stated that the *Ex parte* Orders violated the 14th Amendment of the United States Constitution. This was ignored in the decision by the Supreme Court of Pennsylvania on October 31, 1980. The issues of premature declaration of incompetency, the status of Pittsburgh National Bank as guardian, and the defenses available to the expenditure of funds also were mentioned in the opinion by Simmons, J.

If, as the attorney for the respondent states in his brief in opposition, the guardian was duly appointed, the various Court Orders were proper and the amount authorized to be retained as a balance for emergency or burial expenses were $1,000.00, there would be no reason for the Petition for Certiorari. The true facts supported by the record in this case are set forth in the Petition for Certiorari. The amount to be retained was $1,500.00; there was no proper finding of incompetency; the *Ex parte* Orders authorizing the expenditure of funds for the payment of past due debts violated the law; and the Pittsburgh Office of the Veterans Administration did not have the authority to acquiesce in these expenditures.

Chojnacki Estate, 397 Pa. 596, 156 A 2d 812 (1959) cert. denied, 363 U.S. 826, 80 S. Ct. 1595, 4 L. Ed. 2d 1522 (1960) is cited by both sides and does hold that the Veterans Administration has discretionary powers over funds in the hands of an incompetent veteran's guardian, but in that case the payment was for future care and maintenance and did not dissipate the entire estate.

Chojnacki further sets forth the authority of the Veterans Administration to make future payments for care and maintenance because the payment in that case was a gratuity. In the Opinion from which the Petitioner seeks certiorari, Mr. Justice Roberts implied the incompetent was a veteran and implied that she was receiving a gratuitous payment from the Veterans Administration. This is not correct, the incompetent was not a veteran and the Payment by the Veterans Administration was compensation paid to Vilma Grcich as the result of the battlefield death of her son on whom she was dependent. This was an earned benefit. Once the funds were paid by the Veterans Administration into the guardianship account, the funds belonged to a civilian and not a veteran or his representative and the jurisdiction of the Veterans Administration over the use of those funds ended. However, the provisions of 38 U.S.C. §3101 (a) remained as a protection for those funds. The duty rested with the guardian to protect the incompetent's estate under that section of the law.

The Party who applies for and obtains a Court Order cannot use that Court Order to shield responsibility for actions pursuant to that Order if said actions are illegal and the Order violates Federal Law and Constitutional rights.

Mr. Justice Roberts in his Opinion sets forth the proposition that there is no basis for liability on the part of a guardian when Court approval has been obtained for an expenditure. This proposition cannot whitewash a guardian, improperly appointed, who submits a Petition for Court Approval for an expenditure when that guardian had valid defenses to that expenditure. The Court has no right to issue an *Ex parte* Order for such a proposition and then use that Order to protect the illegal action of that guardian. Protection from this abuse is a basic protection afforded U.S. citizens by the Constitution of the United States and it is from the Supreme Court of the United States that Petitioner seeks this protection.

When this case was argued before the Supreme Court of Pennsylvania, the Veterans Administration, the Pennsylvania Bar Association and the Pennsylvania Banker's Association filed *amicus curiae* briefs in an effort to protect the respondent and all argued for the sanctity of the Court Orders, however, each of the briefs failed to state the true facts which are a matter of the record. The guardian, who was improperly appointed, petitioned the Court of Common Pleas of Washington County, Pennsylvania, for approval of expenditures for past due debts of the incompetent when the said guardian had available the defense of 38 U.S.C. §3101 (a) to oppose the payment of these past due debts; the acquiescence of the Veterans Administration was noted in the Petition; and the Court signed an *Ex parte* Order approving the expenditure.

This was done six (6) times. At no time was any notice given to the incompetent or other interested parties. There was the expenditure of $10,035.00 of funds, received from the Veterans Administration as compensation, for past due debts. From the effect and responsibility for this improper and illegal act the guardian seeks to use *Ex parte* Court Orders which are violative of Due Process.

Petitioner is not attempting to use improperly this Court to question the competency or integrity of the Pennsylvania Supreme Court or the Judiciary of the Court of Common Pleas of Washington County, Pennsylvania, however, it is petitioner's contention that the *Ex parte* Orders issued by the Court of Common Pleas of Washington County, Pennsylvania, as the result of Petitions for Expenditures by the Respondent, were improper, illegal and violative of Due Process as set forth in the Fourteenth Amendment to the Constitution of the United States. The invalidity of these six *Ex parte* Orders is supported by the record in this case. It is also a fact, but not in record of this case, that during the argument before the Pennsylvania Supreme Court that resulted in the decision of October 31, 1981, Judge Richard DiSalle, who issued the *Ex Parte* Order approving the expenditure of $7,600.00 from the funds of Vilma Grcich, was a law clerk for Justice Flaherty who did not participate in this case. The Petitioner leaves it to the Supreme Court of the United States whether this fact or the fact that other members of the Judiciary of the Court of Common Pleas of Washington County, Pennsylvania, serve on committees of the Supreme Court of Pennsylvania is of any consequence.

Conclusion

It is the duty of the Courts of the various States and of the United States to protect the rights of incompetants who cannot protect themselves. In the event that a State or Commonwealth through their Court of Last Resort fails to protect the rights of an Incompetent it is incumbent on the Federal Courts to afford that protection. In the instant case the constitution rights of Vilma Grcich were violated by the actions of the Court of Common Pleas of Washington County, Pennsylvania and the guardian of her estate, Pittsburgh National Bank, the Court of Common Pleas of Washington County, Pennsylvania, corrected the wrong done Vilma Grcich in the only way open to that Court by surcharging the guardian upon whose various petitions the Court had acted. The Supreme Court of Pennsylvania, first affirmed and then reversed the action of the Court of Common Pleas of Washington County, Pennsylvania. In the opinion reversing the Court of Common Pleas of Washington County, Pennsylvania, the Supreme Court of Pennsylvania misapplied Federal Law and actually misstated facts. Further in its Opinion the Supreme Court of Pennsylvania, used the various Court Orders of the Court of Common Pleas of Washington County, Pennsylvania, that violated the Federal Law and the Constitutional rights of Vilma Grcich, to protect the guardian from responsibility for its improper act, when the Court Orders were made on the Petition of the Respondent. For these reasons the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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